

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Revision of the Commission's Rules to Ensure	)	CC Docket No. 94-102
Compatibility with Enhanced 911 Emergency	)	
Calling Systems	)	
	)	
Request for Waiver of GPS Handset	)	WT Docket No. 05-____
Penetration Rule by Verizon Wireless Puerto	)	
Rico	)	
_____	)	

**REQUEST FOR LIMITED WAIVER OF  
VERIZON WIRELESS PUERTO RICO**

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## SUMMARY

Puerto Rico Telephone Company, Inc. d/b/a Verizon Wireless Puerto Rico (“VzWPR”) requests a limited waiver of the 95 percent GPS handset penetration requirement to allow it an additional six months to meet that milestone. In July 2002, the Commission granted VzWPR limited relief from the E911 Phase II rules and imposed a specific compliance plan for VzWPR GPS-capable handset deployment, as well as all other Tier III carriers. At that time, none of VzWPR’s customers owned a GPS-capable handset. Since then, VzWPR has sold approximately 300,000 GPS-capable handsets. Today, all twelve handset models available from VzWPR are GPS-capable, and 92 *percent* of its customers have GPS-capable handsets. VzWPR has met or exceeded each of the Commission’s handset milestones in the *Tier III Waiver Order*, has fully complied with the Commission’s E911 rules, and has demonstrated its commitment to meeting the E911 deployment goals. VzWPR expects more than 93 percent of its customers to use GPS-capable handsets by year-end, falling just short of the 95 percent milestone.

While previous Commission-imposed handset milestones relied in part on the availability of handsets in the marketplace and on carrier actions, the 95 percent penetration milestone is uniquely challenging because it depends on actions *by customers* to change out their handsets. To encourage customers to do so, VzWPR has introduced a variety of GPS-capable handsets in its product line, at all price ranges, and has subsidized and advertised these handsets. In accordance with the *Tier III Waiver Order*, 100 percent of the digital handsets offered for new sales and activations have contained GPS chipsets since February 2004, many months ahead of schedule. While these efforts led to rapid growth in the number of the company’s subscribers that have GPS-capable handsets, that growth rate has slowed because an increasing proportion of customers buying new handsets are trading in GPS models. In addition, customers’ satisfaction

with handsets they purchased in 2003 or earlier has ironically slowed GPS penetration. This trend has led VzWPR to conclude that it may not meet the 95 percent penetration level by December 31, 2005.

VzWPR has met the conditions for a waiver. It has “come as close as possible” to meeting the 95 percent penetration milestone and has been on “a path to full compliance,” through sustained efforts to promote and sell GPS handsets and meeting or exceeding all other FCC-set milestone dates. In particular, VzWPR (1) promoted, subsidized, and discounted GPS handsets to offer customers competitive and affordable choices among those handsets; (2) created targeted marketing programs to send direct mail to customers with non-GPS handsets, and followed up with outbound telemarketing calls to those customers; (3) blocked the reactivation of non-GPS handsets on its network; and (4) added detailed information to its website to inform customers about the benefits of upgrading to GPS-capable handsets. These efforts represent a diligent and good faith attempt to comply fully with the Commission’s December 31, 2005 95 percent GPS handset penetration deadline.

Absent relief from the current deadline, VzWPR may be compelled to discontinue service and force some of these customers to swap out their handsets, even though they are satisfied with their current one. Compelling such disruptive action would in fact disserve customers. Accordingly, a waiver of Section 20.18(g)(1)(v) and modification of the *Tier III Waiver Order* to relieve VzWPR from meeting the 95 percent milestone by December 31, 2005 is consistent with the public interest and warranted under these circumstances. VzWPR seeks only a limited waiver of the rule for six months, until June 30, 2006, to meet the 95 percent milestone, and will continue its efforts to meet that goal as early as possible. It also proposes to file interim reports with the Commission until 95 percent penetration is achieved.

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**REQUEST FOR LIMITED WAIVER**

Puerto Rico Telephone Company, Inc. d/b/a Verizon Wireless Puerto Rico, Inc. ("VzWPR"), pursuant to Sections 1.3 and 1.925 of the Commission's rules,<sup>1</sup> hereby requests a limited waiver of the 95 percent E-911 handset penetration rule, Section 20.18(g)(1)(v),<sup>2</sup> and the corresponding requirement at paragraph 33 of the *VzWPR Waiver Order*.<sup>3</sup> Section 20.18(g)(1)(v) and the *VzWPR Waiver Order* require that VzWPR achieve 95 percent penetration of location-capable handsets among its embedded base of subscribers by December 31, 2005. VzWPR seeks a limited waiver from this requirement and requests an additional six months, until June 30, 2006, to achieve 95 percent penetration. During this time, VzWPR will continue its efforts to meet the 95 percent milestone as soon as possible and proposes to keep the

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<sup>1</sup> 47 C.F.R. §§ 1.3, 1.925.

<sup>2</sup> 47 C.F.R. § 20.18(g)(1)(v).

<sup>3</sup> *Revision of the Commission's Rules to ensure Compatibility with Enhanced 911 Emergency Calling Systems; Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, Order to Stay, 17 FCC Rcd 14841, ¶ 33 (July 26, 2002) ("*Tier III Waiver Order*" or "*VzWPR Waiver Order*").

Commission updated as to its progress.

**I. VZWPR HAS MET OR EXCEEDED EVERY E911 HANDSET MILESTONE TO DATE AND HAS MADE NUMEROUS EFFORTS TO ACHIEVE THE GPS HANDSET GOAL.**

**A. VzWPR Met or Exceeded Each Interim Handset Waiver Requirement.**

In granting VzWPR's request for waiver from the E911 handset milestones in effect in 2002, the Commission observed that small non-nationwide CMRS carriers, such as VzWPR, faced difficulties in meeting the then-imposed handset milestone schedule because handset vendors gave priority to the larger, nationwide carriers.<sup>4</sup> Accordingly, the Commission extended its E911 Phase II interim handset deadlines by thirteen months for Tier III carriers, including VzWPR.<sup>5</sup>

At the time of this *Order*, VzWPR was operating both a CDMA network and a TDMA network in the same market. As such, VzWPR reported in its August 1, 2003 Phase II E911 Interim Report that it planned to deploy a handset-based Phase II 911 solution for its CDMA system and a network-based Phase II 911 solution for its TDMA network because a handset-based solution was not technically feasible at that time.<sup>6</sup> Subsequently, VzWPR decided to phase out use of its TDMA network in favor of CDMA technology.<sup>7</sup>

Despite VzWPR's decision to phase out its TDMA network midstream, VzWPR has met or exceeded all of the handset milestone deadlines imposed by the *Tier III Waiver Order*:

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<sup>4</sup> *Id.* at ¶ 10.

<sup>5</sup> *Id.* at ¶ 1.

<sup>6</sup> *See* Verizon Wireless Puerto Rico Phase II E911 Interim Report, CC Docket No. 94-102, 1 (filed Aug. 1, 2003).

<sup>7</sup> *See* Verizon Wireless Puerto Rico Revised Phase II E911 Interim Report, CC Docket No. 94-102, 2 (filed Nov. 14, 2003). A small number of customers continue to use VzWPR's TDMA network because they continue to be satisfied with those services.

- By September 1, 2003, it was required to begin selling and activating location-capable handsets. *VzWPR exceeded this requirement, as it began selling location-capable handsets in May 2003.*
- By November 30, 2003, at least 25 percent of the new handsets it activated were required to be location-capable. *VzWPR exceeded this requirement. In fact, by this date, approximately 50 percent of total handset activations were location-capable.*
- Between December 1, 2003 and May 31, 2004, at least 50 percent of all new handsets were required to be location-capable. *VzWPR exceeded this requirement. In fact, almost 100 percent of all new handsets that were activated during this time period were location-capable.*
- By November 30, 2004, 100 percent of all new digital handsets that were activated were required to be location-capable. *VzWPR exceeded this requirement. In fact, 100 percent of all handset models that were available from VzWPR were location-capable by February 2004, nine months ahead of schedule.*

VzWPR also met each non-handset-related milestone the Commission imposed on it. For example, the *Tier III Waiver Order* required that:

- In areas where VzWPR receives a valid PSAP request, VzWPR must, within six months or by September 1, 2003, install any hardware and/or software in its CMRS network and/or other fixed infrastructure that is necessary to enable the provision of Phase II enhanced 911 service and begin delivering Phase II enhanced 911 service to that PSAP. *VzWPR met this requirement.*
- On August 1, 2003, VzWPR must file an Interim Report that provides specific, verifiable information regarding VzWPR's progress towards full E911 compliance. *VzWPR met this requirement. VzWPR also filed an updated Interim Report on November 14, 2003, informing the Commission of its intention to pursue a unified approach to compliance with the FCC's automatic location information benchmarks upon phase-out of its TDMA network.*

**B. VzWPR Has Taken Multiple Actions To Encourage Customers To Replace Non-GPS Handsets.**

Since offering its first GPS-compliant handset in early September 2003, VzWPR has sold only GPS-capable handsets, many of which are replacements for customers' first GPS-capable handsets. Today, more than 92 percent of its customers possess a GPS-capable handset. The company has achieved this substantial penetration of its embedded base of customers by

constantly promoting new handsets and their features. Where meeting a milestone depended upon its vendors or other factors beyond its direct control, VzWPR worked to ensure that it would meet the conditions of its waiver. This commitment will continue and VzWPR will not scale back its efforts.

***Offering a Variety of GPS Handsets Across All Price Ranges.*** VzWPR introduced its first GPS-capable handset in May 2003 and has continued to bring new models to market, without compromising its rigorous standards for equipment quality.<sup>8</sup> Early on, VzWPR incorporated GPS capability into the product specifications for its existing handset vendors. Moreover, the company discontinued and replaced older, non-GPS models with new GPS models as they became commercially available. VzWPR also initiated commercial relationships with new handset vendors to increase the potential sources for new GPS-capable handsets. To expedite penetration of GPS handsets, the company made all GPS models immediately available through its online store and retail outlets.

By February 2004, VzWPR had completely converted its product line to include GPS-capable handsets only. Notwithstanding the costs associated with subsidizing handsets with GPS chipsets, VzWPR has continued to offer a variety of phones at all price points, from lower-end phones to more expensive models. Indeed, VzWPR currently offers twelve different GPS-capable handsets at a variety of price levels.<sup>9</sup> The company has required its customers to

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<sup>8</sup> August 1, 2003 Verizon Wireless Puerto Rico Phase II E911 Interim Report at 3. In May 2003, VzWPR started selling and activating the following location-capable handsets for its CDMA system: Nokia 3586, Audiovox 9150x, Audiovox 8300, Audiovox 8500, Audiovox 8600, and Motorola T720.

<sup>9</sup> VzWPR currently offers the following GPS-capable handsets at the following prices with a two-year contract: (1) Nokia 3586 – Free, (2) LG VX3200 – Free, (3) Nokia 2285 Gray – Free, (4) Nokia 2285 Blue – Free, (5) Nokia 6015i – Free, (6) Samsung A650 – \$9.99, (7) LG VX3300 – \$29.99, (8) Motorola V260 – \$19.99, (9) Audiovox 8910 – \$29.99, (10) Motorola V265 – \$99.99, (11) Motorola V710 – \$229.99, and (12) PalmOne Treo 650 – \$429.99. *See*



purchase new phones in order to take advantage of new features, plans, and capabilities. Many of the new handsets that VzWPR offers incorporate other features that not only attract new customers but also encourage existing subscribers to upgrade their handsets to GPS-capable models. For example, almost all of the phones with color screens or which are enhanced for instant messaging contain GPS chipsets. Indeed, the popular camera phone capability requires the purchase of a GPS handset and non-GPS models cannot be upgraded to include this feature.

***Promoting GPS Handsets Through Discounts and Free Upgrade Programs.*** VzWPR has conducted aggressive and effective promotions of both its service and its products through advertising, other marketing, and customer incentives. During the period since VzWPR first offered GPS-capable handsets, the company has advertised extensively to the public via mass-market television ads, radio ads, print media, direct mailings, bill messages and inserts. Beyond generic ads that promote the service, network reliability and the brand, VzWPR has specifically promoted and subsidized its handsets. It encouraged migration to GPS handsets through numerous campaigns aimed to existing customers, reaching them through customer care, outbound telemarketing efforts, mail and advertising efforts. For example, VzWPR's "New Every Two" program gives customers the opportunity to upgrade their unit every two years for free if they choose certain handsets or at a discounted price. Similarly, in October 2005, as part of its efforts to achieve 95 percent penetration, VzWPR began offering one hundred free minutes for use during a three-month period when a customer upgrades his or her handset.

***Targeted Marketing through Mail and Calls to Customers.*** Since January 2004, VzWPR has periodically contacted existing customers through phone calls to encourage them to upgrade their handset to a new one at either a promotional price or for free. These offers were

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(Continued . . .)

<http://www.verizonwirelesspr.com/indexen.php>.

made to customers prior to the end of their contract. Recognizing that customers nearing the end of their contract term or with expired contracts are likely to have older equipment which may not be GPS-capable, VzWPR initiated contacts to these customers on multiple occasions.

VzWPR also created a variety of programs that were targeted directly to those customers who continued to use non-GPS handsets. In particular, VzWPR sent direct mail promotions to non-GPS customers and followed up with outbound telemarketing offering specific handset models for free. Indeed, VzWPR even offered these customers the option of receiving the new handset at work or at home, whichever was more convenient for them, through Island Wide service at no cost. Alternatively, the customer was informed that he or she could visit VzWPR's stores for additional details and offers.

***Blocking Activation of Old Non-GPS Handsets.*** VzWPR implemented other actions to expedite increased GPS handset penetration of its embedded base. The Commission's E911 handset sales milestones required that 100 percent of all new handsets sold and activated by VzWPR be location-capable after November 30, 2004. This rule, however, did not impact non-GPS handsets that had previously been purchased. Accordingly, customers could continue to reactivate their old non-GPS handsets. When it became apparent that some customers would continue to reactivate non-GPS equipment even though newer handsets were readily available, VzWPR tightened its reactivation policy to only allow customers to reactivate GPS-capable equipment on VzWPR's network (no older non-GPS-capable equipment would be allowed to be reactivated).

***Providing Web Site Information on E911 and GPS Handsets.*** In addition, VzWPR has created a section on its web site that is solely dedicated to communicating the importance of having GPS-capable handsets. This section now explains how E911 works and why it is

important as well as provides information on what customers can do if their handsets are not GPS-capable.

**II. DESPITE VZWPR’S EFFORTS, SOME LEGACY CUSTOMERS ARE NOT REPLACING THEIR NON-GPS HANDSETS.**

**A. The FCC Has Previously Adjusted Milestones in Response to Actual Experience in E911 Deployment.**

The Commission has consistently sought to serve the public interest by balancing an aggressive E911 rollout, including GPS-capable handsets, with the recognition that the handset market is inextricably tied to customer choice and the pace of actual Phase II deployments with PSAPs.<sup>10</sup> Handset penetration milestones have been dependent upon market forces and on carriers advising the Commission when milestones should be adjusted.<sup>11</sup> As the market has evolved, the Commission has adjusted its requirements accordingly. In the *E911 Third R&O*, the Commission set what it described as an “aggressive schedule for carriers” choosing to deploy a handset-based solution.<sup>12</sup> The Commission concluded that normal market forces might generate almost complete penetration within three years or less, leaving carriers to do little more than comply with interim handset deadlines. Nevertheless, it noted:

[S]uch predictions are not guarantees. For any of several reasons (e.g., a recession, declining growth rates, or early deployment of non-ALI-capable handsets that customers elect not to replace) the actual pace of ALI-capable handset deployment could lag and may take several years. Some customers will undoubtedly elect to economize by keeping their handsets for much longer than average, despite the advantages of ALI-capable

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<sup>10</sup> *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Third Report and Order, 14 FCC Rcd 17399, ¶¶ 51-53 (1999) (“*E911 Third R&O*”).

<sup>11</sup> *See, e.g., Tier III Waiver Order* at ¶ 35; *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Waiver by Verizon Wireless*, Order, FCC 01-299 (Oct. 12, 2001) (“*VZW Waiver Order*”).

<sup>12</sup> *E911 Third R&O* at ¶ 53.

handsets.<sup>13</sup>

In the *E911 Fourth MO&O*, the Commission extended the handset deployment schedule by one year and changed it from requiring carriers to make “reasonable efforts” to reach 100 percent, to a flat 95 percent requirement.<sup>14</sup> The Commission found that “the current schedule may have been overly ambitious, in view of consumers that may wish to continue to use their non-ALI capable handsets, even if newer handsets provide location as well as other advanced features.”<sup>15</sup>

When the interim handset activation deadlines adopted in the *E911 Fourth MO&O* also proved unattainable, VzWPR, and many other carriers, sought and were granted waivers with new handset milestones.<sup>16</sup> VzWPR did not seek revision of the 95 percent handset penetration deadline at that time because such a request would have been premature and, in any event, the company fully intended to meet this obligation.<sup>17</sup> It has carefully monitored handset penetration data since GPS phones became available, and until recently the data indicated that the 95 percent milestone was achievable by December 31, 2005. The newest penetration data, however, indicate that, despite VzWPR’s efforts to encourage upgrades and conversions to GPS devices, it

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<sup>13</sup> *Id.* at ¶ 51.

<sup>14</sup> *See Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Fourth Memorandum Opinion and Order, 15 FCC Rcd 17442, ¶¶ 43-44 (2000) (“*E911 Fourth MO&O*”). The Commission declined, however, fully heed the recommendations of several major handset vendors that even more time was needed. *Id.* at ¶¶ 13, 25-37.

<sup>15</sup> *See id.* at ¶ 36.

<sup>16</sup> Verizon Wireless of Puerto Rico, Inc.’s Amended Petition for Limited Waiver of Section 20.18(g) of the Commission’s Rules, CC Docket No. 94-102 (filed Nov. 30, 2001) (“VzWPR Waiver Request”). *See also Tier III Waiver Order*.

<sup>17</sup> The Commission has discouraged carriers from seeking premature, non-particularized relief from the E911 rules. *See, e.g., Tier III Waiver Order* at ¶ 41.

is possible that VzWPR may fall slightly short of 95 percent penetration. Thus, a modest adjustment in milestone date is warranted.

**B. Despite VzWPR's Efforts, Some Legacy Customers Are Not Upgrading Their Non-GPS Handsets.**

Today, approximately eight percent of VzWPR's customers have elected not to replace their handsets.<sup>18</sup> That number is expected to continue to decline to around seven percent by year-end. Many of these customers, including VzWPR's legacy TDMA customers, are simply satisfied with their current handsets and level of service. The promotions, targeted marketing, and attractiveness of new products over the last three years have not enticed these legacy customers to convert to GPS-capable handsets.<sup>19</sup> Given VzWPR's efforts to encourage upgrades, it would be unprecedented and ill-advised for the Commission to demand strict compliance that would require the company to *force* customers to swap out their handsets. This compels a second look at the 95 percent milestone as it applies to VzWPR.

**C. VzWPR's Growth Rate in GPS Handset Penetration Has Recently Slowed.**

As described previously, VzWPR met or exceeded all of the Commission-mandated milestones to date for new handset sales. The initial growth in GPS-capable handset penetration was rapid and, as required by the Commission, since February 2004 all new VzWPR handsets sold have been location-capable. As a result, VzWPR sold a staggering number of GPS-capable handsets in 2003 and 2004. Indeed, in 2003 alone, approximately 40,000 customers, representing 17 percent of VzWPR's customer base, were migrated to GPS-capable handsets through aggressive outbound campaigns. Similarly, in 2004, an additional 80,000 number of

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<sup>18</sup> This percentage includes both legacy TDMA and CDMA customers.

<sup>19</sup> As discussed above, the FCC expected that some core of legacy users would not adopt GPS-capable handsets by the established deadline, or ever. *See E911 Third R&O* at ¶ 51.

customers were migrated to GPS-capable handsets.

By 2005, however, this growth had significantly slowed to 28,000 migrated customers because while new GPS-capable handset sales continue to be brisk, newer GPS phones are now replacing older, but nevertheless compliant, GPS-capable handsets bought by the customers two years ago. It is simple arithmetic that further increases in penetration will slow, since an increasing proportion of handset churn is GPS-to-GPS, which has no effect on increasing the overall penetration rate. In addition, the overall churn has been reduced from 2.5% to 2.0% during the third quarter of 2005, further slowing handset replacement.

Although VzWPR's marketing efforts continue to result in handset turnover among its subscribers – precisely what the Commission's rules envision – such turnover does *not* necessarily improve the company's ability to reach the 95 percent penetration milestone.

### **III. LIMITED RELIEF FROM THE HANDSET PENETRATION RULE IS CONSISTENT WITH THE PUBLIC INTEREST AND DOES NOT FRUSTRATE THE FCC'S E911 OBJECTIVES.**

The Commission applies its traditional legal standard to requests for waiver of its E911 requirements – the Commission's rules may be waived for good cause shown, and waiver is only appropriate if special circumstances warrant a deviation from the general rule, and such deviation serves the public interest.<sup>20</sup> In the *Fourth MO&O*, the Commission acknowledged that waivers may be warranted for handset milestones, and clarified how this standard would be applied in the E911 context. In particular, the Commission noted that requests for waiver should be “specific,

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<sup>20</sup> 47 C.F.R. § 1.3; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)). Section 1.925(b)(3) provides further that waiver may be warranted if “(i) [t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) [i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.” 47 C.F.R. § 1.925(b)(3).

focused and limited in scope, and with a clear path to full compliance,” and that “carriers should undertake concrete steps necessary to come as close as possible to full compliance and should document their efforts aimed at compliance in support of any waiver requests.”<sup>21</sup> Grant of an additional six months, through June 30, 2006, to achieve the 95 percent GPS handset penetration milestone is consistent with the public interest under this standard.

**A. A Short Extension of the Milestone Meets the *Fourth MO&O* Criteria.**

As discussed above, despite its efforts to meet the 95 percent milestone, VzWPR may not achieve that goal by year’s end. The company accordingly requests a limited, time-specific waiver of this requirement in light of its full past compliance, its ongoing efforts, and its continuing commitment to increase penetration of GPS-capable handsets. VzWPR believes that 95 percent of its subscriber base will have location-capable handsets within months of the current December 31, 2005 deadline. As discussed below, VzWPR has taken and will continue to take concrete steps to come as close as possible to full compliance and is on a path to full compliance.

As detailed above, VzWPR has taken many such actions. VzWPR (1) promoted, subsidized, and discounted GPS handsets to offer customers competitive and affordable choices among those handsets; (2) created targeted marketing programs to send direct mail to customers with non-GPS handsets and followed up with outbound telemarketing calls to those customers; (3) blocked the reactivation of non-GPS handsets on its network; and (4) added detailed information to its website to inform customers about the benefits of upgrading to GPS-capable handsets. These are diligent, good faith efforts.<sup>22</sup>

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<sup>21</sup> *E911 Fourth MO&O* at ¶ 44.

<sup>22</sup> *See, e.g., Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for a Limited and Temporary Rule Waiver by Sprint Corporation*, Order, 18 FCC Rcd 12543, ¶ 13, n. 52 (2003).

A penetration level of 92 percent has been achieved despite some legacy customers simply choosing not to upgrade their non-GPS-capable handsets. For VzWPR, this has been a daunting task given its relatively recent decision to transition from a dual CDMA/TDMA network to solely a CDMA network. Certain customers just continue to prefer their TDMA handsets. Yet the company has succeeded in transferring the vast majority of its customers to GPS handsets and is likely to exceed 93 percent by December 31, 2005, falling just short of the mandate. It has thus come as close as possible to achieving full compliance.

VzWPR will endeavor to reach the 95 percent penetration level in the same manner it has achieved its interim handset milestones – through a sustained effort that combines all of the multiple efforts outlined above. Because VzWPR continues to add new customers, all of VzWPR’s new activations are for location-capable handsets, and all handsets have a finite useful life, VzWPR will reach the 95 percent milestone. In short, the company is on the “path to full compliance.” It seeks an additional six months, until June 30, 2005, to achieve 95 percent customer GPS handset penetration.

**B. The Relief VzWPR Requests is Consistent with the Public Interest, Will Not Frustrate E911 Objectives, and Will Avoid Forcing Customers To Surrender Handsets.**

As the D.C. Circuit established long ago in *WAIT Radio*, the Commission’s “discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances.”<sup>23</sup> Moreover, where, as here, the Commission “pursue[s] plans and policies bottomed on informed prediction,” the availability of meaningful waiver relief is critical to the

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<sup>23</sup> See *WAIT Radio v. FCC*, 418 F.2d at 1157.



validity of the overall regulatory scheme.<sup>24</sup> This is particularly important where, as here, a mandate was entirely predictive and based on assumptions about customer replacement of handsets that have not remained accurate. An agency has an obligation to modify its mandate in that situation or at a minimum to consider waivers or other relief from that mandate.<sup>25</sup>

***The circumstances facing VzWPR warrant a waiver under established precedent.*** As noted above, the circumstances surrounding E911 deployment in the timeframe allotted by the Commission have changed significantly with respect to the 95 percent penetration rate. The robust growth in monthly GPS-capable handset sales and activations the company previously experienced, and which propelled its ability to meet or exceed the interim handset sale and activation milestones, has slowed as a progressively smaller portion of the embedded base holds onto non-GPS handsets. This marketplace factor, which was integral to the Commission's requirements, departed from what the Commission anticipated. Despite this lowered handset replacement rate, VzWPR has come very close to the target, achieving a 92 percent penetration rate as of November 21, 2005, and should exceed 93 percent by year-end. VzWPR's circumstances cannot be attributed to lack of diligence on its part, but rather to factors outside of its control – primarily (and ironically) embedded base customers' happiness with their old non-GPS handsets.

***Grant of the instant waiver request will not frustrate the Commission's E911 Phase II***

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<sup>24</sup> See *id.* at 1158 (“provision for waiver may have a pivotal importance in sustaining the system of administration by general rule”); *Telocator Network of America v. FCC*, 692 F.2d 525, 550, n. 191 (D.C. Cir. 1982) (“Commission has an ongoing obligation to monitor its regulatory programs and make adjustments in light of actual experience” and “a duty to finetune its regulatory approach as more information becomes available”); *P&R Temmer v. FCC*, 743 F.2d 918, 929 (D.C. Cir. 1984) (“Where any administrative rule, although considered generally to be in the public interest, is not in the public interest as applied to particular facts, an agency should waive application of the rule”).

<sup>25</sup> See, e.g., *Aeronautical Radio, Inc. v. FCC*, 928 F.2d 428 (D.C. Cir. 1991).

**objectives.** VzWPR has undertaken numerous efforts to promote handset turnover, fully meeting the Commission's expectations of carriers. VzWPR will continue these efforts and, given its near compliance with the 95 percent milestone, grant of the request will not frustrate the Commission's objective of making location capable handsets widely held throughout a carrier's subscriber base. Every VzWPR subscriber who desires a new handset has twelve models, in all price ranges – all GPS-capable – from which to choose.

***Strict enforcement of the 95 percent milestone would be inequitable, unduly burdensome, and contrary to the public interest because it would disrupt customers by compelling them to trade in handsets before they would otherwise do so.*** Not only does VzWPR offer a wide variety of GPS-capable handsets with other bundled features and capabilities to consumers, it does so at discounted prices (or for some models, for free) that enable consumers at every price range to purchase upgraded handsets. Given these measures, there is no need to strictly enforce the rule and require VzWPR to compel its subscribers to upgrade their handsets. Indeed, the Commission's rationale for modifying the subscriber penetration from 100 percent to 95 percent recognizes that forcing all subscribers to change their devices would not be warranted.<sup>26</sup>

Short of cutting off service to non-GPS-capable handsets, there is no assurance that such efforts will actually result in compliance with the 95 percent milestone. Full compliance depends on actions *by customers*, not the carrier. There is no public interest benefit in forcing VzWPR to deprive customers of service until they change out their handsets. This would be an unprecedented action that would confuse and disrupt customers, not help them.

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<sup>26</sup> E911 Fourth MO&O at ¶ 36.

**C. VzWPR Will File Interim Reports with the Commission Until It Achieves 95 Percent Penetration.**

The *VzWPR Waiver Order* imposed a reporting condition on VzWPR. On August 1, 2003, VzWPR was required to provide the Commission with a list of PSAP requests that had been made. The reporting condition also required the company to disclose its status on ordering and/or installing the necessary network equipment, the estimated date on which Phase II service would first be available on its network, and information on whether the carrier was on schedule to meet the December 31, 2005 deadline.

In order to secure relief from the 95 percent requirement, VzWPR is willing to take the following actions. First, it will file an interim report on February 1, 2006 detailing its GPS handset penetration level. Second, it will continue to file a similar report on a quarterly basis until it achieves the 95 percent penetration requirement. This will supply the Commission with current and regularly updated data regarding the company's progress toward maximum GPS handset penetration.

**IV. CONCLUSION**

For the foregoing reasons, waiver of Section 20.18(g)(1)(v) and modification of the *VzWPR Waiver Order* is consistent with the public interest and the Commission's waiver policies. VzWPR requests an extension of six months, until June 30, 2006, to reach 95 percent mandate, but will continue all of its diligent efforts to meet that milestone as early as possible. The company also proposes to submit to the Commission information regarding its GPS handset penetration on a quarterly basis, starting February 1, 2006, until it achieves that requirement.

Respectfully submitted,

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